

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 02-0540P
Gross and Adjusted Gross Income Tax
Fiscal Years ended 06/27/99 and 07/02/2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer was audited and found to have placed its service income into low rate gross income that amounted to seventy-five percent (75%) of its gross income tax liability. Taxpayer requests an abatement of the penalty.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer states that it incorrectly applied the incorrect tax rate for the years at issue and has, in prior years as well as subsequent years used the correct tax rate. Taxpayer requests that the penalties be abated.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer failed to correctly tax its gross income at the high rate of tax. Taxpayer failed to assure that the tax returns were correctly filed and apparently failed to verify the tax rates, which is clearly negligent. The taxpayer has not provided reasonable cause to allow a penalty waiver.

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FINDING

Taxpayer's protest is denied.

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